IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Criminal Revision Case Nos.1406 to 1408 of 2007
and Miscellaneous Petition Nos.1, 1 and 1 of 2007

Hari Nivas Traders
Rep. by its Proprietor, A.Natarajan,
S/o. Avinasiappa Gounder
18, V.K.R. Thottam, P.S.Sundaram Road,
Tiruppur - 1 .. Petitioner in all the Crl.R.Cs./ (Accused)

-Vs.-

1. M/s. S.J.L.T. Textiles Ltd.,
   Rep. by its Managing Director,
   V.Jegatheesan

2. M/s. S.J.L.T. Textiles Ltd.,
   Depo Agent, S.Malarvizhi

   Both are represented by their
   Power of Attorney Agent,
   E.K.P.Sampanthan .. Respondents in all the Crl.R.Cs. (Complainant)

Prayer: Criminal Revision Cases filed under Sections 397 and 401 of the Code of Criminal Procedure to eschew the re-examination of P.W.1 dated 02.07.2007 made in C.C.Nos.35, 36 and 37 of 2006, respectively, on the file of the Second Additional District Munsif Court, Erode.

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For Petitioner in all the Crl.R.Cs. : Mr. N.Manokaran

For Respondents in all the Crl.R.Cs. : Mr. A.Ramesh for M/s. Ram and Ram

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C O M M O N O R D E R

The petitioner in all the above criminal revision cases is the complainant in C.C.Nos.35, 36, 37 of 2006 respectively pending on the file of the Second Additional District Munsif Court, Erode, for the the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act").

2. Earlier, at the stage of arguments, petitions were filed by the complainant to recall P.W.1 and to mark the deed of power of attorney dated 24.01.2001 and those petitions came to be dismissed. Aggrieved by that the complainant filed Criminal Revision Case Nos.1217, 1219 and 1221 of 2005 and by a common order dated 28.11.2006 passed therein, a learned Judge of this Court has set-aside the order of the learned Magistrate and allowed the revision cases with a direction that the complainant shall be permitted to recall P.W.1 to produce the power of attorney deed dated 24.01.2001 and the respondent/accused be given opportunity to cross-examine on that point. Pursuant to the said order of this Court, P.W.1 was recalled and he was cross-examined. During the course of cross-examination, questions have been put to P.W.1 as to whether any board resolution has been passed authorising the filing of cases relating to the dishonour of the cheques. P.W.1 has answered in affirmative, but has stated that such resolution has not been produced. When further being cross-examined suggesting that no such resolution has been passed, the said suggestion was denied. Contending that an ambiguity has arisen in the evidence elicited from P.W.1 and to clarify the same P.W.1 should be re-examined, Court has permitted the re-examination of P.W.1 and during re-examination the board resolution dated 13.10.2000 as Ex.P-22 (in C.C.No.35 to 37 of 2006) was sought to be marked and hence the said exhibits have been marked subjected to objection. Being aggrieved by the recalling of P.W.1 and the permission given to mark the said documents, the accused has filed the above criminal revision cases.

3. Heard Mr.N.Manokaran learned counsel for the petitioner in each of the petitions and Mr.A.Ramesh, learned counsel for the respondents in each of the petitions.

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4. Learned counsel for the petitioner submitted that this Court by its order dated 28.11.2006 passed in Criminal Revision Case Nos.1217, 1219 and 1221 of 2005 permitted recalling of P.W.1 only for the limited purpose of producing power of attorney deed dated 24.01.2001 and the accused was given liberty to cross-examine him on that aspect and therefore the Court below ought not to have permitted the recalling of P.W.1 and allowed the marking of Ex.P-22 though subject to objection. Learned counsel further submitted that

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the respondent is seeking to produce the said documents only to fill up the lacuna in the evidence.

5. Countering the said submissions the learned counsel for the respondents in each of the petitions submitted that during the cross-examination of P.W.1 on 03.10.2003, a question was put to P.W.1 as to whether any board resolution had been passed authorising P.W.1 to file the complaint and to such a question, P.W.1 had answered that no such resolution had been passed till that date. But in his cross-examination on 02.07.2007 the question put to P.W.1 was totally different; the question put to P.W.1 was that whether any board resolution had been passed authorising the filing of case in respect of return of cheques. While answering that question P.W.1 gave an affirmative answer, but it is further stated that they had not produced that resolution. At that point of time, a further question has been put to him suggesting that no such resolution has been passed. According to the learned counsel, only to clarify the ambiguity in the above said two answers elicited from P.W.1 on 03.10.2003 and 02.07.2007 it had become necessary to recall P.W.1 and clarify the same. Accepting the contention of the respondent the Court below had permitted recalling of P.W.1 and marking of the board resolution. Learned counsel further submitted that there is no irregularity or illegality in recalling P.W.1 and the question of filing up any lacuna does not arise.

6. I have carefully considered the above said submissions made by the learned counsel on either side, perused the answers elicited from P.W.1 in his cross-examination on 03.10.2003 and on 02.07.2007. A perusal of the answers given by P.W.1 shows that there really appears to be some ambiguity and it is settled law that when such ambiguity arises in the answers elicited from the witnesses, it is the right of the party calling the witnesses to clarify the same by recalling and re-examining the witnesses. When the Court below was of the opinion that there is ambiguity in the answers elicited from P.W.1 and there is necessity to clarify the same and had permitted the recalling of P.W.1 and marking of the said documents, this Court exercising revisional powers should not ordinarily interfere with such powers. Only when the lower court's order having glaring defect of a serious nature has resulted in grave failure of justice or where there is glaring defect in procedure or manifest error on a point of law which resulted in miscarriage of justice, revisional jurisdiction should be invoked. In these cases no such miscarriage of justice has occasioned.

7. In the considered view of this Court, by allowing the recalling of P.W.1 and marking of the said documents, no prejudice whatsoever will be caused to the petitioner since the petitioner will have his opportunity to further cross-examine P.W.1 on the evidence given by him during the course of his re-examination.

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8. In such view of the matter, the above criminal revision cases fail and the same are dismissed. Consequently the connected MPs are closed. Further, it is made clear that the Court below should give an opportunity to the petitioner to further cross-examine P.W.1 in respect of the answers given by P.W.1 during the course of his re-examination.

9. Since the cases are pending before the Court below from the year 2002, the Court below is directed to expedite the trial and conclude the same as expeditiously as possible and preferably within a period of two (2) months from the date of receipt of a copy of this order.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

srk

To

The Second Additional District Munsif Court, Erode.

2 ccs to Mr.N. Manokaran, Advocate, sr. 66907, 66908
1 cc to M/s. Ram and Ram, Advocate, SR. 66816

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